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**MAR 31 2006**

**OFFICE OF PETITIONS**

In re	:
Simmons, et al.	:
Application No. 10/020,786	:
Filed: December 13, 2001	:
Patent No. 6,979,556	:
Issued: December 27, 2005	:
	:
	:

DECISION REGARDING  
PATENT TERM ADJUSTMENT

This letter is in response to the "REQUEST FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed January 26, 2006. Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred fifty-seven (157) days to two hundred twenty-one (221) days.

The application for patent term adjustment is **DISMISSED**.

On December 27, 2005, the above-identified application matured into U.S. Patent No. 6,979,556. The patent issued with a Patent Term Adjustment of one hundred fifty-seven (157) days.

Patentees state that the patent issuing is not subject to a terminal disclaimer.

The Office determined a patent term adjustment of one hundred fifty-seven (157) days based on an adjustment for PTO delay of nineteen (19) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), one hundred seventy-eight (178) days pursuant to 35 U.S.C. 154(b)(1)(A)(iv) and 37 C.F.R. § 1.703(a)(6) and one hundred eight-two (182) days pursuant to 35 U.S.C. 154(b)(1)(B)(iii) and 37 C.F.R. § 1.703(b), reduced by Applicants' delays of fifty-eight (58) and thirty-three (33) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b), and sixty seven (67) days and sixty-four (64) days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(c)(8). The adjustment of sixty-three (64) days is at issue.

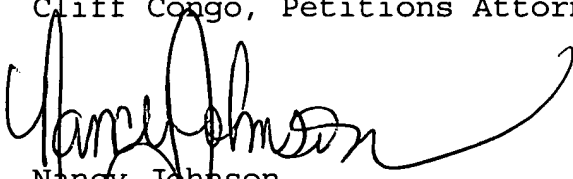
A review of the application file reveals that applicants filed a Supplemental Information Disclosure Statement (IDS) on April 23, 2004, after they had previously filed a response on February 19, 2004. The IDS did not contain a proper 37 C.F.R. § 1.704(d) statement. The IDS contained a statement that "at least **some** of the references were recently cited in an International Search Report mailed March 24, 2004." § 1.704(d) states that an IDS will not be considered a failure to engage under (c)(8) if it is accompanied by a statement that "**each** item of information contained in the information disclosure statement was **first cited** in any communication from a foreign patent office in a counterpart application and that this communication was not received" more than thirty days prior to the filing of the IDS.

With the filing of the petition, patentees assert that each item was newly cited in this foreign communication. Patentees should have mirrored the language of "first cited" as required by § 1.704(d). Accordingly, applicant delay of sixty-three (64) days was properly assessed pursuant to 37 C.F.R. § 1.704(c)(8). In view thereof, the correct determination of patent term adjustment is **one hundred fifty-seven (157) days**.

If applicants want to make an assertion that "each item" was "first cited", then patentees may file a Request for Reconsideration of this patent term adjustment decision, with a statement mirroring the language of § 1.704(d). Patentees are given **thirty (30) days** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

Receipt of the fee under 37 C.F.R. § 1.18(e) is acknowledged.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a long, sweeping horizontal flourish extending to the right.

Nancy Johnson  
Senior Attorney  
Office of Petitions